

## **REMARKS**

The present amendment and request for reconsideration is filed in response to the Office Action mailed June 30, 2006, the period of response having been extended until December 30, 2006. Claims 1-20 and 22-34 remain in this application; claim 21 has been canceled and claims 4, 12-13, 22 and 26-34 have been withdrawn from consideration.

In the Office Action, the Examiner objected to the disclosure for various informalities. The Applicant submits that any informalities have been corrected by the replacement paragraphs. However, Applicant submits that the “incremental optical encoder (260)” is indicated in Fig. 9 of the drawings, contrary to the Examiner’s objection at page 2 of his report.

In the Office Action, the Examiner objected to claims 1 and 8 for various informalities. The Applicant submits that any informalities have been corrected in amended claims 1 and 8.

### **Nonstatutory double patenting rejection**

In the Office Action, the Examiner provisionally rejected Claims 1-3, 5-11, 14-21 and 23-25 under the judicially created doctrine of obviousness double patenting as being unpatentable over claims 1-25 of copending Application No. 10/463495.

In response to the Office Action, Applicant encloses an executed Terminal Disclaimer.

### **Indefiniteness**

In the Office Action, the Examiner rejected claim 25 under 35 U.S.C. 112, second paragraph, as being indefinite. Applicant submits that amended claim 25 now provides proper antecedent basis.

### **35 U.S.C. 102(a), 102(b) and 103(a) rejections**

Applicant has amended claim 1 in order to state that the linear actuator comprises a motor and a drive member. The motor is connected to the structural member and the drive member is pivotally connected to the primary joint member.

Applicant contends that the cited art, taken together or alone does not teach nor anticipate a prosthesis (i.e. an artificial substitute or replacement of a part of the body) that includes a motor that is connected to the structural member, while the drive member is pivotally connected to the primary joint at a distance from a pivot assembly which connects the structural member to the primary joint.

More specifically, the Flowers et al. document does not teach a pivotal connection between the actuator and the primary joint. The Ota citation, shows an orthotic device and as such is not applicable to the present invention. EP 1169982A1 does not teach nor anticipate an actuator having a motor connected to the structural member and having a drive member connected to the primary joint member.

Therefore claim 1, as amended, is patentable over the cited art.

As a consequence to amendments to claim 1, minor amendments have been made to claims 19 and 20 and claim 21 has been deleted.

Finally, pending claims 2, 3, 5 to 11, 14 to 20 and 23-25 are ultimately dependent on claim 1 and as such are also patentable over the cited art.

Applicants respectfully requests favorable reconsideration of the present application.

The examiner is invited to telephone the undersigned, applicant's attorney of record, to facilitate advancement of the present application. Please apply any charges not covered, or any credits, to Deposit Account 04-0932 (Reference Number 14206-67101-B).

Respectfully submitted,

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By: 

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